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COMMISSION AGAINST DISCRIMINATION

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Mass-C MCAD,

COMPLAINANT

v.

Brooks Brothers, Inc.

RESPONDENT

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\* PROBABLE

\* CAUSE FINDING

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\* DOCKET NO: 92-BEM-1191

\* EEOC. NO: N/A

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I SUMMARY OF COMPLAINT

On October 6, 1992, The Massachusetts Commission Against Discrimination ( hereinafter "MCAD"), the Complainant, issued the above-entitled complaint of discrimination against the Brooks Brothers, Inc., the Respondent.

Summarily, MCAD alleges that Respondent has engaged in acts of discrimination in hiring personnel for its retail apparel business. In this matter, the alleged act of discrimination includes Respondent's refusal to consider an individual for employment because of his race and color in violation of M.G.L. c. 151B, s. 4 (1), and Title VII of the Civil Rights Act of 1964 and 1968 as amended.

II SUMMARY OF RESPONSE

Respondent denies any wrongful discrimination in its refusal to hire the black person (identified as Tester A) in this matter because of his race and color.

Respondent contends that Tester A was not treated in any discriminatory manner with respect to its employment opportunities. Respondent asserts that the black tester was not interviewed, promised, or offered any position in its employ due to the fact that there is no position available that matches his experience and qualifications at the time he applied.

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### III SUMMARY OF INVESTIGATION

#### A) Undisputed Issues:

1. Respondent is an employer within the definition of MGL Chapter 151B.
2. As part of a testing initiative which targeted Boston-area employers, the MCAD sent two testers who posed as job seekers to Respondent's store on Friday, August 7, 1992.
3. The two testers are identified as A and B. Tester A is black; tester B is white.
4. The two testers entered Respondent's store separately within 60 minutes of each other.
5. On August 7, 1992, after entering Respondent's store, the black tester met with David Surrrette, Respondent's Business Manager. The black tester asked Surrrette about applying for a job. Surrrette told the black tester, that there was "nothing available" but that he could fill out an application which would be kept on file. The black tester again asked Surrrette if he was certain that there was nothing available. Surrrette reiterated that there were not any positions available. The black tester then proceeded to fill out and submit an application.
6. At another time on the same day, the white tester entered Respondent's store and met with David Surrrette. The white tester asked Surrrette about applying for a job. Surrrette informed the white tester that a position was indeed open, that of the assistant store manager. Surrrette then retrieved an application, handed it to the white tester, and suggested that he take it home, fill it out, and return it later with a resume.
7. On June 21, 1992, Respondent advertised in the Boston Globe the opening for the position of Assistant Store Manager. The position was to be available at its branch store located at 46 Newbury Street, Boston, MA.





B) Disputed Issues:

At issue is the alleged disparate treatment the Respondent accorded the black tester and the white tester.

1. The Commission avers that Respondent did not accord the same treatment in its handling of potential applicants for employment because of their race and color.

2. The Commission contends that a white job seeker was conferred better treatment by Respondent than a black applicant. Specifically, in this matter, Respondent informed, encouraged, and later accepted a resume from a white applicant for its consideration of the available Assistant Manager position. Concurrently, it failed to inform, encourage, or receive a resume from a black applicant for its consideration of said position.

3. Respondent asserts that on August 7, 1992, David Surrence, the store's Office Manager, greeted both testers and gave them the opportunity to fill out employment applications. As the Office Manager, Surrence has no authority or responsibilities relative to hiring.

4. With respect to the "nothing available" statement which Surrence made to the black tester, Respondent contends that the black tester submitted a job application indicating that he was looking for "sales clerk" position. As there was no sales clerk position available at that location during that time, the statement, if made, would have been entirely true.

5. Respondent did not explain why the black tester was told that there were no positions available. Rather, Respondent asserts that the opening for the Assistant Manager position was advertised to all readers of the Boston Globe on June 21, 1992 regardless of their race.

6. Investigation reveals that the testing program did not begin its search of job advertisements until July 16, 1992. As a result, neither the coordinators of the testing program nor the testers who were selected to visit Respondent's store were apprised of the aforementioned advertisement.

7. Respondent further contends that neither tester was formally interviewed. Therefore, there is no grounds for allegations of disparate treatment.



8. Respondent further asserts that the reason for not hiring the black tester for the available position was due to his lack of managerial qualification. The position was subsequently filled on August 19, 1992.

#### V CONCLUSION

With regards to the issue of employable qualifications of both testers, it is undisputed that they presented to Respondent similar experience in their job application. If anything, the black tester had a better application: he had retail sales experience in a men's clothing store. The white tester's resume did not indicate any experience relative to clothing business.

The fact that both were not hired is immaterial relative to the different treatment they were accorded.

The white tester was informed and encouraged to apply for the Assistant Manager position. Additionally, the white tester was also invited to return to submit his resume. Although he was subsequently denied because of insufficient qualification and due to the fact that an internal candidate was promoted, it appears that, at the very least, Respondent attempted to confer upon the white tester an initial consideration for said position.

On the contrary, the black tester was neither informed nor encouraged to apply for the position of Assistant Manager which was still open at the time of his initial inquiry.

Respondent's contention that the "nothing available" statement made to him was truthful in nature since the black tester submitted a job application indicating that he was interested in "Sales Clerk" position. Respondent contends that no sales clerk position was available at that time.

Investigation reveals that the black tester submitted his application to Respondent after he was told twice that there was "nothing available."

In addition, Respondent did not ask the black tester to take the job application home and submit it at a later date along with a resume as it did to the white tester.

Therefore, it appears that, at the very least, the black tester was not accorded an initial consideration for the Assistant Manager position.



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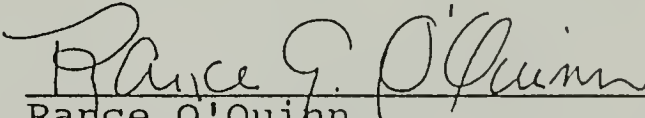
Investigation further reveals through Respondent 1990 EEO-1 report that out of a total of 62 employees at Respondent's store, only 2 were black. This represents less than 5% minority currently employed in its work force. The current estimated minority work force in Boston is about 30%.

Furthermore, neither of the two black employees listed in the report held managerial or professional positions.

There is sufficient evidence indicating Respondent committed an unlawful practice in its hiring in violation of M.G.L c. 151B, s. 4 (1), and the Title VII of the Civil Rights Acts of 1964 and 1968 as amended.

A finding of probable cause is, therefore, compelled.

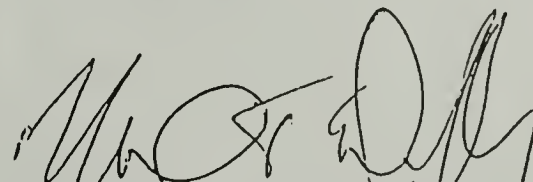
  
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Joseph Quoc Tran  
Compliance Officer

  
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Rance O'Quinn  
Director of Investigations

#### DISPOSITION

Therefore, pursuant to Section 5 of Chapter 151B of the Massachusetts General Laws, and in conformity with the foregoing Findings of Fact, I have this day determined that a probable cause exists for crediting the allegations of the Complaint. Pursuant to said Section 5, Respondent will be afforded an opportunity to participate in a conciliation conference at the offices of the Commission. If Respondent does not choose to so participate, or if such conference does not prove to be productive, the case will be certified for public hearing, at which time Respondent will be given a full opportunity to answer the allegations of the complaint.

Signed this 27<sup>th</sup> day of November, 1992.

  
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Michael T. Duffy,  
Investigating Commissioner

